

New Jersey State Tax news

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inside

<i>from the director's desk</i>	1
<i>FAIR rebates</i>	2
<i>paper s&U returns eliminated</i> ...	3
<i>brokerage account waiver</i>	4
<i>harry scheidell scholarship</i>	4
<i>tax assessor certificates</i>	5
<i>tax assessors' calendar</i>	5
<i>criminal enforcement</i>	6
<i>streamlined sales tax</i>	6
<i>tax briefs</i>	8
<i>current amnesty programs</i>	9
<i>enforcement summary stats</i>	10
<i>in our courts</i>	11
<i>in our legislature</i>	17
<i>tax calendar</i>	18
<i>important phone numbers</i>	18

from the director's desk

Streamlined Sales and Use Tax

I am pleased to report that New Jersey's Sales and Use Tax Act was recently amended (P.L. 2005, c.126, enacted July 2, 2005) to conform our law to the requirements of the Streamlined Sales and Use Tax Agreement (SSUTA). For over five years, New Jersey has participated in the Streamlined Sales and Use Tax Project, which is a multi-state effort to simplify and modernize the collection and administration of sales and use taxes, and which developed the SSUTA.

The adoption of the Streamlined Sales and Use Tax Agreement Legislation will mean significant changes in New Jersey's tax policy and administration. The uniform product definitions, which are a key feature of the SSUTA, will mean changes in the taxability of specific items in New Jersey. For example, while "candy" remains subject to sales tax, anything that doesn't meet the new, standard definition of "candy" will be exempt. In addition, the treatment of leasing, direct mail processing, and deductions for bad debts will be affected. However, I believe that in the long run, the simplifications and uniformity provided by the new "streamlined" system will lessen the burden of complying with New Jersey's sales tax laws for both sellers and purchasers.

The new streamlined sales tax provisions take effect October 1, 2005. Information about many of the coming changes has already been posted on our Web site at: www.state.nj.us/treasury/taxation/streamchanges.htm. Please check this page frequently; we will be updating the information on an ongoing basis. A [list](#) of links to the materials that have already been published appears on page 6 of this issue.

Other Legislation

Summaries of other important legislation enacted recently appear on page 17, including:

[P.L. 2005, c.125](#) Multistate Reciprocal Personal Income Tax Set-Off Program

[P.L. 2005, c.127](#) Uncoupling Certain Qualified Production Activities Income

[P.L. 2005, c.130](#) Pension and Other Retirement Income Exclusions



Budget Funds 2004 FAIR Rebates

The State Budget for fiscal year 2006 provides continued funding for the FAIR Rebate Program. Rebate amounts for tax year 2004 remain unchanged for residents who are 65 or older, blind, or disabled; however, the budget limits rebate amounts for homeowners and tenants under age 65 who are not blind or disabled.

Unlike previous years, homeowners file the single FAIR rebate applica-

tion that is sent to them in the mail instead of the two separate applications (NJ SAVER and homestead rebate). Tenants continue to use the rebate application that is part of the New Jersey income tax return.

Who is Eligible

Homeowners and tenants who occupied their principal residence in New Jersey on October 1, 2004, and who paid property taxes on that dwelling either directly or through rent, are eligible for a 2004 FAIR rebate,

continued on page 3

2004 FAIR Rebate Payment Dates

H O M E O W N E R S

Age 65 or Older and/or Disabled

2004 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$ 200,000	Early August 2005
\$ 200,000	Not eligible

Under Age 65 and NOT Disabled

2004 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$ 200,000	Fall 2005
\$ 200,000	Not eligible

T E N A N T S

Age 65 or Older and/or Disabled

2004 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$ 100,000	Early August 2005
\$ 100,000	Not eligible

Under Age 65 and NOT Disabled

2004 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$ 100,000	Early August 2005

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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FAIR rebates - from page 2

provided that their gross income for the entire year does not exceed the income limit. The income limit is \$200,000 for homeowners and \$100,000 for tenants.

How to Apply

The deadline for both homeowners and tenants to file their FAIR rebate applications has been extended to October 17, 2005.

Homeowners: FAIR homeowner rebate applications were mailed in April to those homeowners whom the Division of Taxation was able to identify as 65 years of age or older or disabled on the last day of the 2004 tax year. Application packets were mailed in early July to non-senior, non-disabled homeowners. Most homeowners can file their FAIR rebate applications by phone by calling 1-877-658-2972 or online at: www.state.nj.us/treasury/taxation/

Any eligible homeowner who has not received a 2004 FAIR homeowner rebate application can call the FAIR Rebate Hotline (1-888-238-1233) or [e-mail](mailto:fairrebateinfo@state.nj.us) the Division to have one mailed to them.

Tenants: Applicants who are required to file a 2004 New Jersey income tax return complete their FAIR tenant rebate application (Form TR-1040) and file it with their resident income tax return (Form NJ-1040, Form NJ-1040EZ, or return filed electronically using NJ WebFile, or approved vendor software).

Tenants who are eligible for a 2004 FAIR tenant rebate and who have already filed a 2004 New Jersey income tax return have until

October 17, 2005, to file the FAIR tenant rebate application, Form TR-1040.

Applicants who are not required to file a 2004 New Jersey income tax return because their income is below the minimum filing threshold file only Form TR-1040 to apply.

Rebate Amounts

Rebate amounts differ for homeowners and tenants, and are also determined by income, amount of property taxes (or rent) paid, filing status, and whether the applicant is 65 or older or eligible to claim an exemption as blind or disabled for the tax year.

Homeowners: For tax year 2004, rebates for eligible homeowners age 65 or older or disabled range from a minimum of \$500 up to a maximum of \$1,200. Homeowners under age 65 and not disabled are eligible for a minimum of \$300 up to a maximum of \$350. In no case will a homeowner receive a rebate greater than the amount of property taxes actually paid.

Tenants: For tax year 2004, tenants age 65 or older or disabled are eligible for a minimum rebate of \$150 up to a maximum of \$825. Tenants under age 65 and not disabled are eligible for a rebate of \$75.

Funding for 2004 Rebates

P.L. 2005, c.121, signed into law on July 2, 2005, made a supplemental appropriation of \$400 million to pay for the FAIR rebates. The revenue to support this appropriation was generated by an unanticipated increase in final New Jersey gross income tax payments received this spring. Revenues from payments

made in April and May were up 98% over the same period last year.

Although the exact source of this "April surprise" may not be known for some time, a number of possibilities exist. One explanation is that the millionaires' tax, an increase in the gross income tax rate for individuals with taxable income over \$500,000 which was signed into law in June 2004, left many high-income taxpayers with larger balances due in April, accounting for an estimated \$450 million. Other explanations for the additional income include gains in the stock market recognized in 2004 and a first-time dividend paid by Microsoft Corporation.

This unexpected growth is not unique to New Jersey. Other states' revenues were also up 30–50% this year during the same period. Without taking the millionaires' tax into consideration, New Jersey's revenue increase was in line with these figures.

More information on the FAIR rebate programs is available at: www.state.nj.us/treasury/taxation/fair/rebateinfo.htm □

Paper ST-50/ST-51 Returns Eliminated

For more than 10 years New Jersey has been encouraging taxpayers to use "paperless" filing for both their State income tax and their New Jersey business tax returns. And, we have continued to expand our Internet-based and telephone filing systems to accommodate the increasing number of taxpayers who chose to file electronically.

continued on page 4

S&U returns - from page 3

Electronic filing has been required for some business taxes and fees since 2002, and in January 2004, the Division of Taxation began to phase out the use of paper sales and use tax returns (Form ST-50/ST-51). Over the past 18 months we have been notifying groups of taxpayers that they were required to file their sales and use tax returns electronically either online or by phone and to make their payments by electronic check (e-check), electronic funds transfer (Automated Clearing House debit or credit), or credit card.

The phase-out of paper returns is now complete and all ST-50/ST-51 sales tax filers must file and pay electronically. The Division no longer issues Form ST-50/ST-51 coupon booklets. Information about filing sales and use tax returns is available on our Web site at:

- [Filing Sales and Use Tax Returns](#) (Forms ST-50/ST-51)
- [How to Pay Sales and Use Tax](#) □

INHERITANCE/ESTATE TAX

Brokerage Account Waiver Requirements

The New Jersey inheritance tax and estate tax statutes provide that property which belongs to or stands in the name of a resident decedent may not be transferred without the written consent of the Director of the Division of Taxation. The taxes remain a lien until paid on all the property of a decedent.

The Division has received numerous inquiries regarding the tax waiver requirements for brokerage accounts.

Harry Scheidell Scholarship



Sally Hayban of Hamilton (second from left), a May 2005 accounting/finance graduate of Rider University, is congratulated by members of the New Jersey Department of the Treasury's Division of Taxation and fellow Rider alumni on receiving the Harry Scheidell Memorial Scholarship. They are (from left to right) Samantha Scheidell, Taxpayer Accounting Branch staff member (2005 graduate) and daughter of the late Mr. Scheidell; Robert K. Thompson, Director, Division of Taxation (1970 graduate); Harold E. Fox, Deputy Director (1970 graduate); and Richard W. Schrader, Assistant Director, Audit Activity (1972 graduate). Friends and colleagues of Mr. Scheidell, also a Rider alumnus and member of the Division of Taxation for more than 30 years, established the one-time scholarship in his memory for a student pursuing an accounting degree.

An inheritance/estate tax waiver is required for all brokerage accounts belonging to or standing individually or jointly in the name of a resident decedent. A tax waiver is required if the brokerage firm had an office in New Jersey regardless of where the account was opened.

Assets held in a brokerage account which are registered in street name may be bought and sold without the necessity of first obtaining a tax waiver. The assets must, of course,

remain in the account and nothing may be transferred or released to the estate or beneficiaries until a tax waiver is obtained.

In those situations where an account passes to a decedent's surviving spouse, child, stepchild, legally adopted child, issue of any child or legally adopted child, parent, grandparent, or surviving domestic partner and the taxable estate plus adjusted taxable gifts as determined under the

continued on page 5



brokerage accounts - from page 4

provisions of the Internal Revenue Code in effect on December 31, 2001, does not exceed \$675,000, Form L-8 may generally be used. Form L-8 is an affidavit and self-executing tax waiver which is filed directly with the brokerage firm.

The blanket waiver provisions of N.J.A.C. 18:26-11.1(c) are applicable to brokerage accounts. Up to 50% of the account balance on a decedent's date of death may be released without a tax waiver.

Questions regarding tax waivers may be forwarded to the Inheritance and Estate Tax Section of the Individual Tax Audit Branch at PO Box 249, Trenton, New Jersey 08695-0249. The Inheritance and Estate Tax Section may be reached by phone at 609-292-5033. □

LOCAL PROPERTY TAX ***Tax Assessor*** ***Certificates***

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Thirteen persons passed the March 19, 2005, C.T.A. exam and received Tax Assessor Certificates dated July 1, 2005. They are:

Camden County: Lynda A. Marchewka, Barrington Borough.

Mercer County: Erin K. Serfass, West Windsor Township.

Monmouth County: Samuel Befarah, IV, Long Branch City.

Morris County: Michelle L. Hess, Parsippany-Troy Hills Township.

Ocean County: Jeffrey A. Cranmer, Stafford Township; Andrew T. Lacey, Long Beach Township; Joseph J. Rogus, Dover Township.

Salem County: Irene Scarpaci, Penns Grove Borough; James G. Waddington, Salem City.

Somerset County: Frank Dallessio, Somerville Borough; Mark W. Tinder, Bridgewater Township.

Union County: John M. Capage, Union Township.

Commonwealth of Pennsylvania: John R. Ingram, Allentown, Lehigh County.

The next examination is scheduled for March 25, 2006. The deadline to file applications for this exam is February 23, 2006. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

LOCAL PROPERTY TAX ***Tax Assessors'*** ***Calendar***

July 1–

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension within which appeals may be heard and determined.

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2006 together with a notice that the completed form must be filed with the assessor by August 1, 2005, in order to claim continuance to each taxpayer whose land was assessed for tax year 2005 under the Act.

2nd Tuesday in July–

- State Equalization Table prepared.

August 1–

- Owners of farmland must file application (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2006.

August 5–

- All SR-1A forms showing information to be used in compiling 2005 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

August 25–

- Completion of State Equalization Table by Director, Division of Taxation.

continued on page 6



assessors' calendar - from page 5

September 1–

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner or death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns (Form PT-10) of local exchange telephone, telegraph, and messenger system companies, with respect to tax year 2006, to be filed with the assessor for taxing district in which the said property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2006, for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 13–

- County Tax Board transmits Table of Aggregates to County Treasurer who then transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerk, and Clerk of Board of Freeholders. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On December 23, 2004, the Office of Criminal Investigation (OCI) received confirmation that in United States District Court, Richmond, Virginia, Adib Mograbi and Laurie Patterson, a husband and wife residing in Richmond, pled guilty to a charge

of conspiracy to traffic in contraband cigarettes as a result of an investigation that established that between 1999 and 2004 the couple sold cigarettes both over the counter in Virginia, knowing that these cigarettes would be shipped to various other states, and over the Internet under the names Cigoutlet.com and Affordablecigs.com directly to consumers in other states, including New Jersey. As part of the pleas, Mograbi and Patterson agreed that the amount of New Jersey cigarette tax evaded as a result of their operation is \$441,857, and they supplied the Division with the customer names and addresses, purchase dates, and amount of cigarettes which they shipped to New Jersey. This information was forwarded to Audit Services for appropriate assessment and collection.

- On January 7, 2005, criminal complaints were filed in Superior Court in Somerville, charging Rafael Rosario, 43, of West Meadow Drive, Bound Brook, New Jersey, with eight crimes arising from his operation of Café Imperial Restaurant/Bar located in Bound Brook. The charges are second-degree failure to turn over taxes, in violation of N.J.S.A. 54:52-15; second-degree failure to make required disposition of property received, contrary to N.J.S.A. 2C:20-9; second-degree theft by deception, contrary to N.J.S.A. 2C:20-4a; third-degree filing false tax reports, contrary to N.J.S.A. 54:52-10; third-degree misapplication of entrusted property, contrary to N.J.S.A. 2C:21-15; third-degree

continued on page 7

Streamlined Sales and Use Tax Legislative Changes

P.L. 2005, c.126, effective October 1, 2005, conforms the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The legislation will affect the administration of New Jersey's sales and use tax in a number of areas. More information is available at:

[New Jersey Sales Tax Rates and Boundaries](#)

[Notice: New Jersey Enacts Streamlined Sales and Use Tax Agreement Legislation](#)

[Notice: Changes in the Sales and Use Tax Act Affecting the Sales of Food and Food Products](#)

[Notice on Leases and Rentals of Tangible Personal Property](#)

[Notice to the Direct Mail Industry](#)

[Notice to Retailers of Fur Clothing](#)

[SSTA DRAFT Proposed New Rules: N.J.A.C. 18:XX](#)

[Certificate of Mailing and Service](#)

[Streamlined Sales and Use Tax Agreement Response Letter](#)

[Streamlined Sales Tax Petition](#)

If you have questions concerning the streamlined sales and use tax legislation, [e-mail](mailto:nj.streamlined@treas.state.nj.us) us at: nj.streamlined@treas.state.nj.us



criminal enforcement - from page 6

tampering with public records, contrary to N.J.S.A. 2C:28-7a(1); fourth-degree deceptive business practices, contrary to N.J.S.A. 2C:21-7h; and fourth-degree false swearing, contrary to N.J.S.A. 2C:28-2a. The charges allege that Rosario consistently under-reported the amount of sales tax collected by Café Imperial for the years 2001, 2002, and 2003. The charges further allege that Rosario illegally failed to turn over to the State more than \$75,000 in sales tax collected from customers for those tax years. The New Jersey Division of Taxation's Office of Criminal Investigation, the New Jersey Division of Alcoholic Beverage Control, and the New Jersey Department of Labor and Workforce Development have all joined an ongoing investigation being conducted by the Somerset County Prosecutor's Office. Rosario and Kenneth Henderson, suspended Bound Brook Police Chief, were arrested on October 19, 2004, by the Somerset County Prosecutor's Office detectives and charged with second-degree official misconduct and conspiracy to commit official misconduct. Rosario was arraigned on the complaints by the Honorable Edward M. Coleman. Judge Coleman continued the defendant on bail, previously set at \$100,000 cash, after having denied Rosario's motion to reduce the original bail amount.

- On January 20, 2005, in Superior Court – Hudson County, Jersey City, Manuel Mier, 50, of Irvington, New Jersey, entered guilty pleas to three counts: failure to file motor fuels tax

returns; failure to pay \$95,909 in motor fuels tax in connection with 76 Tonnelle Friendly Service LTD in North Bergen, New Jersey, from 1997 to 2000; and failure to pay \$181,199.30 in motor fuels tax in connection with Leticia, Inc., in Hillside, New Jersey, from 1999 to 2002. The plea agreement calls for Mier to make restitution of the total tax, \$277,108.30, prior to sentencing. This prosecution is being handled by the State Office of the Attorney General.

- On January 20, 2005, OCI assisted the Division of Criminal Justice – Alcoholic Beverage Control in the execution of a search warrant at JWTA, Inc., 1641 Route 70, Cherry Hill, a food and liquor wholesaler operating without an ABC license. The Division of Criminal Justice seized 107 cartons of untaxed cigarettes and several thousand bottles of beer and wine, which were seized because of the subject's unlicensed status. Alcoholic beverage tax will be assessed on the seized products, and previously filed alcoholic beverage tax returns will be compared with business records seized.
- On February 2, 2005, in Salem, New Jersey, Jaswinder S. Dhillon, whose last known address is in Virginia Beach, Virginia, was indicted by a Salem County Grand Jury on three criminal charges as a result of an investigation which established that Dhillon, the principal of MJS Truck Plaza Inc. in Carneys Point, New Jersey, failed to file tax returns and remit motor fuels tax and sales tax he collected from customers as a trustee for the State in an amount greater

than \$75,000, a second-degree offense. Dhillon closed his truck stop on July 31, 2000, and failed to turn over the entrusted tax dollars he had collected for June and July 2000, the last two months of business. If convicted, Dhillon faces up to 25 years in jail and fines of up to \$315,000. The matter was presented to the grand jury by the Salem County Prosecutor's Office.

- On February 18, 2005, in Secaucus, New Jersey, OCI seized approximately 4,094 cartons of untaxed cigarettes which had been flown into Newark Airport from various European countries by unidentified Internet vendors for delivery to customers. This brings the total number of cartons of cigarettes seized in this ongoing investigation to approximately 43,823. The approximate retail value of the seized cigarettes is \$2,726,667.06; the averted tax loss is \$1,206,008.96. These seizures were accomplished with the cooperation of the U.S. Bureau of Customs and Border Protection as a result of information developed by the U.S. Postal Inspection Service.
- On March 14, 2005, Lamine Ouattara of East Orange pled guilty to charges of theft by deception and theft of identity in Essex County. Mr. Ouattara had been indicted on April 13, 2004, based on evidence that he had filed 13 false and fraudulent New Jersey gross income tax returns wherein he claimed and received earned income tax credit refunds totaling \$9,311. In addition, evidence was presented that he

continued on page 8

criminal enforcement - from pg. 7

committed theft of identity by using social security numbers and names other than his own. He was scheduled for sentencing on May 23, 2005, after which he faced a deportation hearing. This case was opened based on a referral from the East Orange Police Department and was prosecuted by the Essex County Prosecutor's Office.

- On March 16, 2005, in Freehold, a Monmouth County Grand Jury returned an indictment of Fred Harari, 42, of West Long Branch, New Jersey, Murad Kassir, 30, of Oakhurst, New Jersey, and Michael Adjmi, 45, of Eatontown, New Jersey, who are all officers of American Dream Home Furnishings, Inc., which operated retail furniture stores in Howell and Ocean Townships. The indictment charges that between August and December 2002 the three corporate officers defrauded Citifinancial Retail Services, which provided financing for purchases made by American Dream Home Furnishings' customers, of \$900,000 by accepting payment for furniture which had not been delivered, and that between January and April 2003 the corporate officers failed to file sales and use tax returns, and collected and failed to turn over sales and use tax. This case was a joint investigation between OCI and the Monmouth County Prosecutor's Office, which presented the matter to the grand jury.
- On March 18, 2005, Harvey Schneider, Jr., the responsible party for Shore Transmissions,

LLC, was sentenced to a five-year term of probation, ordered to make restitution to the Division in the amount of \$46,271.04, and signed a civil consent judgment in favor of the Division. The sentencing stemmed from the April 2, 2003, indictment of Harvey Schneider, Jr., and Shore Transmissions, LLC, by a State Grand Jury on various third-degree charges of theft by deception, theft by failure to make required disposition of property received, misapplication of entrusted property, failure to file New Jersey sales tax returns, and failure to pay or turn over New Jersey sales tax collected. The charges arose from the operation of a transmission repair business in Point Pleasant by the corporation and Mr. Schneider. In addition to the charges associated with the tax violations, there are also charges associated with consumer fraud wherein Mr. Schneider failed to make repairs, or misrepresented work performed, and fraudulently billed customers. Because Schneider engaged in consumer fraud, this case was investigated jointly by OCI and the New Jersey Division of Consumer Affairs' Office of Consumer Protection. Subsequent to the indictment, Mr. Schneider fled New Jersey but was arrested in New York and extradited here for trial. He pled guilty to all six counts of the indictment on January 11, 2005. The case was prosecuted by the Division of Criminal Justice.

- One hundred eighty-four (184) complaints alleging tax evasion were evaluated from January through March 2005 in the Office of Criminal Investigation.

- During the same period, one hundred fourteen (114) charges were filed in court and twenty-six (26) arrests were made in thirty-six (36) cases involving violations of the Cigarette Tax Act. A total of 16,040.1 cartons of untaxed cigarettes, having a total value of \$998,016.15 and including 237.5 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

9-1-1 System and Emergency Response Fee

Collection and Payment — All businesses required to collect the 9-1-1 system and emergency response fee must register to do so and must file quarterly returns (Form ERF-100) for each calendar quarter even if no fees were due for that particular quarter. Returns are due on or before the 20th day of the month following the close of the calendar quarter and must be filed by phone. The Division will not accept paper returns. There is no charge for filing 9-1-1 system and emergency response fee returns by phone.

In addition to filing Form ERF-100 electronically, quarterly payments must be made electronically either by electronic check (e-check), credit card, or electronic funds transfer. E-check payments can be made during the phone call when filing Form ERF-100 through the business paperless telefiling system. Credit card payments can be made by calling 1-800-2PAYTAX toll-free or online at www.officialpayments.com after completing the telephone filing and receiving a confirmation number. Payments made by credit

continued on page 9



tax briefs - from page 8

card are subject to a convenience fee of 2.5% of the tax liability paid directly to Official Payments Corporation. Taxpayers who choose to pay by electronic funds transfer (Automated Clearing House debit or credit) must first [enroll](#) with the Division of Revenue. Enrollment is not required prior to making e-check or credit card payments.

More information about the electronic payment options is available at www.state.nj.us/treasury/taxation/payelect.htm

Corporation Business Tax Net Operating Loss Deduction —

Legislation enacted on June 29, 2004, (P.L. 2004, c.47), allows for a limited net operating loss (NOL) deduction for privilege periods beginning during calendar years 2004 and 2005. The deduction permits a reduction of entire net income by up to 50%. To the extent that any NOL is disallowed by reason of this limiting provision, the date on which the disallowed deduction would otherwise expire is extended by a period equal to the period of disallowance.

An NOL originating in 2002 may be carried over for use beginning in 2004, subject to the limitations referenced above. The deduction for an NOL carryover is prohibited for periods beginning in calendar years 2002 and 2003.

NJ QSSS Filing — To maintain the separate entity principle, every New Jersey Qualified Subchapter S Subsidiary (QSSS) must file Form CBT-100S and pay the minimum tax of \$500 as required under N.J.S.A. 54:10A-5(e). For a taxpayer that is a member of an affiliated or controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, the amount of minimum tax is \$2,000.

Further, N.J.A.C. 18:7-3.4(i) provides: If a taxpayer is part of a group of taxpayers in which the tax liability of the group is reflected on a single return of a member of the group, the other members of the group are also required to file returns with New Jersey. Such returns shall reflect the minimum tax.

The parent corporation (a New Jersey S corporation) must consent to taxation by New Jersey by filing a Form CBT-100S which includes the assets, liabilities, income, and expenses of the QSSS. Failure of the parent to either consent or file Form CBT-100S for a period will result in the denial of the New Jersey QSSS status and the subsidiary will be subject to taxation in New Jersey as a C corporation.

S Corporations — When a corporation elects to register as a New Jersey S corporation, in order for the election to be valid, every shareholder of the corporation must consent to the election and the jurisdictional requirements as detailed in Part II of the New Jersey S corporation election form (CBT-2553). The corporation, in turn, consents to the election and the assumption of any tax liabilities of any nonconsenting shareholders who were not initial shareholders as indicated in Part III of Form CBT-2553.

When a nonresident shareholder of an S corporation that has become a New Jersey S corporation does not consent to the election, the S corporation is required to withhold gross income tax from that shareholder's pro rata share of S corporation income. Payments made by the S corporation on the shareholder's behalf will be reported on Line 4, Part II, of Schedule NJ-K-1 which is part of Form CBT-100S. These payments must be included as estimated payments on the nonresident shareholder's New Jersey income tax return (Form NJ-1040NR or Form NJ-1041).

S Corporation Dissolution — Once a corporation has elected to register as a New Jersey S corporation and the election has been accepted, the corporation remains a New Jersey S corporation as long as it is a Federal S corporation. The filing deadline for a letter of revocation is on or before the last day of the first tax year of the election. To terminate New Jersey S corporation status after the first year, a corporation must terminate its Federal S corporation status. Therefore, an S corporation

Current Amnesty Programs

Indiana is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

IN Sep 15 – Nov 15 www.in.gov/dor/amnesty/

continued on page 10

tax briefs - from page 9

that elected New Jersey S corporation status two or three years prior cannot revoke its New Jersey S corporation status without first terminating its Federal S corporation status.

Cosmetic Medical Procedures Gross Receipts Tax

Exempt Organizations — The Division responded to a question regarding whether hospitals that are deemed to be “exempt organizations” within the meaning of N.J.S.A. 54:32B-9(b) are required to collect the cosmetic medical procedures gross receipts tax pursuant to N.J.S.A. 54:32E-1(a). (Note that while the Act itself does not specify a short title, it is being commonly referred to as the “Cosmetic Medical Procedures Gross Receipts Tax Act.”) Despite similarities (including tax rate, time for quarterly filing, and the obligation of the seller of taxable items to collect the tax from the recipient of the taxable services, goods, and occupancies), the cosmetic medical procedures gross receipts tax is entirely separate from the sales tax, and the act that imposes it is separate and distinct from the Sales and Use Tax Act.

N.J.S.A. 54:32B-9(b), which is part of the Sales and Use Tax Act, provides an exemption for nonprofit organizations organized and operated exclusively for certain purposes. This provision applies only to sales and use tax, that is, the taxes imposed under N.J.S.A. 54:32B-1 et seq., known as the “Sales and Use Tax Act.” N.J.S.A. 54:32E-1 (Cosmetic Medical Procedures Gross Receipts Tax Act), on the other hand, does not include any provision exempting specific types of providers. It also does not contain any provision incorporating by reference the exempt organization provision or any of the other exemption provisions that are part of N.J.S.A. 54:32B-1 et seq.

Hospitals that are 501(c)(3) organizations for Federal income tax purposes and which have been granted exempt organization status for sales and use tax purposes under N.J.S.A. 54:32B-9(b) are not exempt from the tax collection requirements of the Cosmetic Medical Procedures Gross Receipts Tax Act. N.J.S.A. 54:32E-1. They must, therefore, collect tax from patients on cosmetic medical procedures and related goods and occupancies that are subject to the tax imposed under this new tax law.

Multiple Taxes

Partnership Withholding and Millionaire’s Tax — The withholding for out-of-State corporate and non-corporate partners is based on distributed and undistributed taxable income. The nonresident partner withholding rate is 9% for corporate partners and 6.37% for unincorporated partners subject to the gross income tax. Withholding is based on the partner’s share of “entire net income” multiplied by the partnership’s New Jersey allocation factor computed under the corporation business tax, rather than partnership rules. The corporate partner will still be subject to the partnership corporation business tax payment provisions even when the corporate partner has nexus with New Jersey, unless the partner has a bona fide office in New Jersey consistent with N.J.S.A. 54:10A-6.

The nonresident withholding tax is set forth at N.J.S.A. 54:10A-15.11(a) which states that: “A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall, on or before the 15th day of the fourth month succeeding the close of each privilege period,

continued on page 11

Enforcement Summary Statistics First Quarter 2005

Following is a summary of enforcement actions for the quarter ending March 31, 2005.

• Certificates of Debt:		• Jeopardy Seizures	1
Total Number	3,630	• Seizures	72
Total Amount	\$34,602,315	• Auctions	1
• Jeopardy Assessments	275	• Referrals to the Attorney General’s Office	386

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdiscal.htm

tax briefs - from page 10

remit a payment of tax. The amount of tax shall be equal to the sum of: all of the share of the entire net income of the partnership for that privilege period of all nonresident noncorporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L. 1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .0637 plus all of the share of the entire net income of the partnership for that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L. 1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09.”

Therefore, as stated in N.J.S.A. 54:10A-15.11(a), the highest partnership nonresident withholding rate for individuals is 6.37%. The partnership nonresident withholding rate will remain at 6.37% unless the statute is amended to provide for a higher withholding rate.

Sales and Use Tax

Contract Occupancies — The Sales and Use Tax Act defines “occupant” as a person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use, or other agreement. N.J.S.A. 54:32B-2(1). A “permanent resident” is any occupant of any room or rooms in a hotel for at least 90 consecutive days. N.J.S.A. 54:32B-2(m).

The Division is of the opinion that when a company, such as an airline, contracts up front for a room for at least 90 days, no sales tax should be

charged regardless of the fact that different employees occupy the room(s) each night. A written contract with the airline is unnecessary; in order to receive the exemption they just have to meet the 90-day continuous stay requirement. If the length of occupancy is uncertain at the outset and the room is rented on a weekly or monthly basis, then sales tax should be charged. Once the continuous occupancy reaches 90 days, the occupant can file a Claim for Refund (Form A-3730) with the Division, which can be obtained by calling our Customer Service Center at 609-292-6400 or from the Division’s Web site at www.state.nj.us/treasury/taxation/pdf/other_forms/sales/a3730.pdf. Please note that a sales tax exemption certificate from the company is unnecessary. □

In Our Courts

Cash Business Audits

Mark-On Analysis – Luigi II Pizza Restaurant and Luigi Corsaro, et al. v. Director, Division of Taxation, decided March 31, 2005; Tax Court Nos. 004439-2000 and 004440-2000.

Mr. Luigi Corsaro owned and operated Luigi’s Pizza, a restaurant that sold pizzas, subs, pasta dishes, and other dinners. Pursuant to an audit, the Division increased the corporation’s gross sales and thereby assessed corporation business tax (CBT), sales and use tax (S&U), and litter control tax against the corporation as well as individual gross income tax against Mr. Corsaro and his spouse. The Division also issued a determination that Mr. Corsaro was a responsible person and therefore liable for the sales and use tax and gross income tax withholding

liabilities of the corporation. Luigi’s Pizza, Mr. Corsaro, and his spouse appealed the Division’s assessments to the Tax Court directly from the audit determination.

In the process of auditing Luigi’s Pizza, the auditor requested Luigi’s Pizza’s books and records. Although purchase records were available, Luigi’s Pizza was unable to supply guest checks, log books, register receipts, etc. Consequently, the auditor determined that there was insufficient information available to conduct an audit and reconstructed Luigi’s Pizza’s gross receipts based upon a mark-on analysis of the food and drink purchases. The auditor used the reconstructed gross receipts to adjust Luigi’s Pizza’s reported gross receipts on their CBT, S&U, and litter control tax returns. In turn, Luigi’s Pizza’s CBT income was also increased. These adjustments also resulted in the imposition of an individual gross income tax assessment against Mr. and Mrs. Corsaro.

The Court found that Luigi’s Pizza did not maintain books, records, or any information useful to the Division that would confirm or deny their allegations and testimony. Although it retained bank deposit and purchase information, Luigi’s Pizza failed to supply guest checks, register receipts, etc. The Court ruled: “Without actual books and records to support their claims, the presumption of correctness that attaches to the Director’s assessment in this case is not overcome.” Consequently, the Court upheld the Division’s assessments as well as the determination that Luigi Corsaro was a responsible person of Luigi’s Pizza.

continued on page 12

in our courts - from page 11

Markup Analysis – Yilmaz, Inc. v. Director, Division of Taxation, decided April 1, 2005; Tax Court No. 000240-2003.

Plaintiff (Yilmaz) operated a restaurant and bar known as the Bridgewater Pub. Pursuant to an audit, the Division increased the corporation's gross sales utilizing a markup method and thereby issued corporation business tax (CBT) and sales and use tax (S&U) assessments against the corporation. The auditor also assessed gross income tax withholding (GIT-ER). Yilmaz protested the audit assessment to the Division's Conference and Appeals Branch (CAB) where several minor adjustments were made to the markup analysis that both increased and reduced the markup but reduced the S&U and CBT assessments overall; however, the conferee also denied Yilmaz's deduction for trucking expenses claimed on the CBT returns due to Yilmaz's failure to substantiate the deduction. Yilmaz then appealed CAB's final determination to the Tax Court contending that the Division utilized unreasonable and arbitrary assumptions in the markup analysis and failed to account for its inventories.

In Court it was determined that Yilmaz did not use guest checks and did not retain cash register tapes for any portion of the audit period. Allegedly, sales information from the cash register tapes was entered each night into a spreadsheet program after the cash registers were closed by Yilmaz. Plaintiff's accountant testified that the spreadsheet program became corrupted and consequently the information it contained was not reliable. Therefore, the accountant used the bank deposit

method to determine CBT sales after making adjustments for loans, intercompany transfers, and cash payouts.

After testing Yilmaz's reported cost of goods sold for one tax year to determine if they were reported correctly, the auditor opined that Yilmaz had underreported CBT purchases by a ratio of 1.0516 of audited purchases to reported CBT purchases. The difference was entirely attributable to purchases of produce and cigarettes for which Yilmaz did not retain receipts. This ratio was applied to all other years under audit and increased Yilmaz's cost of goods sold (COGS) for each year. The auditor did not account for inventories in the computation of COGS because Yilmaz neither reported CBT inventories nor did he have any inventory records.

The auditor opined that Yilmaz's books and records were insufficient to verify reported gross sales and therefore resorted to a markup method to verify reported sales. Essentially, the auditor marked up the cost of food and beverages obtained from purchase invoices based upon their selling prices to determine a markup by category. Then the auditor multiplied the category markup by the amount of category purchases to determine the total gross sales for that year and an overall markup. Using the overall markup, the auditor recomputed the S&U and CBT gross sales for each year of the four-year audit period.

While comparing payroll to sales, the auditor concluded that payroll was insufficient to support the audited sales. Therefore, the auditor applied the ratio of reported wages and salaries to reported sales to determine audit wages and salaries

based upon audited sales for each year of the audit period.

At trial, Yilmaz contested the amount of the Division's allowances for happy hour sales, specials, coupons, discounts, etc.; however, Yilmaz offered no books, records, or other documentation as to the correctness of its own claimed amounts. Yilmaz also contested the Division's denial of the trucking expense on the CBT return based upon Yilmaz's accountant's testimony that he calculated the expense based upon verbal information provided by Mr. Yilmaz. Apart from testimony, Yilmaz could not produce any evidence as to the salaries and wages paid to its employees.

The Court referenced case law ruling that the burden of establishing that the Division's assessment is incorrect is on the taxpayer and that a taxpayer's naked assertions are insufficient to overcome the Division's presumption of correctness. Moreover, the Court stated that cumulative naked assertions are also insufficient to overcome the presumption even as here where the accountant's testimony corroborated Yilmaz's testimony. The Court ruled that statutes and regulations require that the taxpayers must retain records for the statute of limitations period and referred to *Alpha I* where the Tax Court ruled that a taxpayer who destroys records before the statute of limitations expires places itself in jeopardy for additional tax assessments.

The Court concluded that the Division is not required to establish that it used the most reasonable means to independently verify tax liabilities. The Division is permitted wide

continued on page 13

in our courts - from page 12

latitude to determine the tax due from such information as may be available, including external indices. Addressing Yilmaz's contention that the assessment's reasonableness was not supported by Yilmaz's lifestyle, the Court responded that it is within the Division's discretion to determine whether it is cost-effective to perform a lifestyle investigation into the owners of every bar and restaurant that appear to have underreported its sales and income. Furthermore, the Court ruled that the Division was not required to guess the amount of plaintiff's inventory.

The Court affirmed the Division's final determination holding that Yilmaz failed to overcome the Division's presumption of correctness. In a case involving only factual issues and the Division's methodology, such as the audit of a cash business, the presumption of correctness can only be overcome by cogent evidence that is "definite, positive, and certain in quality and quantity to overcome the presumption" focusing on the reasonableness of the underlying data and the methodology used. The Court ruled that although proof of an aberrant methodology will overcome the presumption of correctness, proof of an imperfect methodology will not overcome it.

**Corporation Business Tax
Alternative Legal Theory –
*Chemical New Jersey Holdings, Inc.
v. Director, Division of Taxation*,
decided December 17, 2004; Appel-
late Division No. A-5175-02T2.**

In 1992 and 1993, plaintiff (Chemical) filed corporation business tax returns as an "investment company" on September 23, 1993, and

October 13, 1994. In 1999, the Division assessed additional corporation business tax based on Chemical's filing as a common corporation after it determined that Chemical failed to qualify as an investment company. Chemical appealed timely to the Tax Court in February 2001 on the basis that it was denied its status as an "investment company." Approximately one year later, Chemical filed an amended complaint retracting its initial claim and alleged that its filing status should be as a "financial business corporation." Chemical never filed returns as a "financial business corporation" for either year at issue. The Tax Court held that Chemical was not entitled to change its filing status from an "investment company" to a "financial business corporation" more than seven years after it filed its original returns because the statute of limitations had run on amending the original returns and because the business decision rule bound it to its initial filing status.

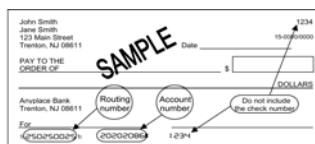
The Appellate Division found that the Tax Court properly concluded that Chemical's choice to file as an "investment company" rather than a "financial business corporation" was a business decision; however, the Appellate Division opined that the business decision rule does not bar challenges to the assessed tax based upon these circumstances. Furthermore, the Appellate Division opined that the issue is the propriety of the Division's assessment, not whether plaintiff may re-file or seek a refund. The Appellate Division reasoned that the Division's denial of Chemical's filing status as an "investment company" was the basis of the Division's assessment and to resolve this issue Chemical's actual corporate status needed to be established. Noting that alternative legal theories may be presented at Tax Court because it is a trial *de novo*, the Appellate Division reversed and remanded the case to the Tax Court.

continued on page 14

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in our courts - from page 13

Gross Income Tax

Gain on Sale of Rental Real Estate Not Held By a Business Entity – *Moroney v. Director, Division of Taxation; Denitzio v. Director, Division of Taxation*, decided March 14, 2005; Appellate Division, Nos. A-3424-03T1 and A3423-03T1.

Both taxpayers sold property that was rental real estate not owned by a business entity. (See [New Jersey State Tax News, Summer 2004](#).) In determining gain or loss in this situation, the Division assessed tax based upon its announcement in the *State Tax News* that depreciation would reduce the adjusted basis of the property only to the extent that annual depreciation offset annual gross income before considering any other expenses or deductions. This calculation resulted in limiting basis reductions to depreciation that resulted in tax benefits to the taxpayer. The Division's announcement was in response to the New Jersey Supreme Court's decision in *Koch v. Director, Division of Taxation*, 17 N.J. Tax 321 (A.D. 1997), certification granted 152 N.J. 12, 702 A.2d 351, reversed 157 N.J. 1, 722 A.2d 918, that tax could not be imposed unless there is recovery of a past tax benefit or an accession to wealth and therefore that a partner's basis in his partnership interest could not be reduced by nondeductible partnership losses.

In calculating gain (loss) from the disposition of property in the instant cases, the Tax Court ruled that basis could only be reduced by depreciation to the extent that depreciation could offset income remaining after first deducting operating expenses (actual out-of-pocket expenses as opposed to accounting expenses such as depreciation) against gross income. The Tax Court determined that although N.J.S.A. 54A:5-1(c) authorized the Division to assign priority and assignment to deductions for S corporations, that otherwise there was no statutory language applicable to the sale of other types of property, such as rental property. Also, the Court found that the Division's assignment of a first priority deduction to depreciation produced a result that was both contrary to *Koch* and inconsistent with the Internal Revenue Code.

The Appellate Division affirmed the Tax Court's decision stating that it was satisfied that the *Koch* imposition of a tax on economic gain, rather than fictitious income, provided sufficient support to calculate the amount of unused depreciation by first applying actual out-of-pocket expenses to income before considering an accounting deduction such as depreciation.

Refund Claim Raised in Complaint – *William B. Smith and Mary Ann Smith v. Director, Division of*

Taxation, decided January 27, 2005; Tax Court No. 001665-2000.

Plaintiffs (Smiths) filed their 1994 joint New Jersey gross income tax return on April 15, 1995, and therein reported income from the gain on the husband's disposition of his interest in a limited partnership. On January 27, 1998, the Division issued a notice of deficiency that assessed tax on unreported 1994 partnership income from the cancellation of a mortgage on property in which the partnership held an interest. Although the Smiths challenged this issue, the Division's January 10, 2000, final determination upheld the assessment.

The Smiths filed a complaint in Tax Court on April 10, 2000, contesting the Division's final determination and, as a separate count, claimed for the first time that they were entitled to a refund on the reported income from the husband's disposition of his partnership interest due to the New Jersey Supreme Court's January 14, 1999, decision in *Koch v. Director, Division of Taxation*, 17 N.J. Tax 321 (A.D. 1997), certification granted 152 N.J. 12, 702 A.2d 351, reversed 157 N.J. 1, 722 A.2d 918. The Division moved to dismiss the refund claim on the grounds that the claim was untimely.

As a general rule, under N.J.S.A. 54A:9-8(a), refund claims must be filed within three years from when the return was filed or two years from when the tax was paid, whichever date is later. However, where a taxpayer is issued a notice of deficiency, N.J.S.A. 54A:9-8(e) and 9-9(b) permit a taxpayer's assertion of a claim of overpayment or refund that might otherwise be time-barred under the general statute

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continued on page 15

in our courts - from page 14

of limitations provision of N.J.S.A. 54A:9-8(a). Specifically, 9-8(e) provides:

(e) Effect of petition to director. If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 54A:9-2 and if the taxpayer files a timely petition with the director under section 54A:9-9, he may determine that the taxpayer has made an overpayment for such year (whether or not he also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund shall be allowed or made, except —

(1) As to overpayments determined by a decision of the director which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the director which has become final; and

(3) As to any amount claimed as a result of a change or correction described in subsection (c).

The Division contends that the statute's extension of the statute of limitations concludes with the final administrative decision. The Smiths claim that the statute read in conjunction with N.J.S.A. 54:9-10(e) suspends the running of the period for filing a refund claim until the Director's decision becomes final, which is not until completion of the judicial proceedings where a complaint is filed.

Upon analyzing the statutes, the Court found the Division's position to be persuasive. The Court opined that the statutes are reasonably understood to provide an administrative review process for a deficiency assessment concerning all questions regarding the gross income tax liability for a given period, which is then subject to judicial review. Consequently, the Court determined that the plaintiffs' refund claim was untimely under the statute as the claim was not presented before the final administrative determination. The Court reasoned that the taxpayers' interpretation would create an anomaly. If the statute suspended the running of the period to file a refund claim until after judicial review proceedings concluded, then the statute of limitations would begin to run again and presumably be subject to a separate administrative determination and judicial review.

The Court noted that even under a claim of equitable recoupment or alternative legal theory that the claim for refund would have to be dismissed because both equitable recoupment and alternative legal theory require that the refund claim must arise out of the same transaction as the assessment. Here, the refund claim on *Koch* grounds related to the disposition of the partnership interest, which is distinct and independent from the tax assessment on unreported income from mortgage cancellation.

Therefore, the Court dismissed the count of the complaint relating to the refund claim because it was not presented to the Division before the Division's final administrative determination.

Property Tax Relief Programs

Verification of Eligibility for the Homestead Rebate — *Susan Clayton v. Director, Division of Taxation*, decided December 22, 2004; Tax Court No. 000914-2004.

Plaintiff (Clayton) filed a timely application for a 2002 homestead rebate as a tenant. The Division requested written verification of Clayton's status as a tenant. Clayton provided the Division with a letter, purporting to be signed by her landlord, stating that Clayton resided at the claimed residence from December 1, 2001, till July 18, 2003. The Division compared the landlord's signature on this document with the landlord's signature on the landlord's gross income tax return and determined that the signatures did not match. Therefore, the Division requested additional documentation including the rental agreement covering the 2002 calendar year. Clayton forwarded a rental agreement for the period of April 2000 to March 31, 2001, a letter from the landlord with the landlord's name handprinted, and copies of preprinted money receipts with the words indicating the landlord's name and Clayton's name.

N.J.S.A. 54:4-8.62 provides that the Division may require verification of eligibility for the rebate. The Court opined that the Division had ample reason to question the authenticity of the documents, as the landlord's signature on the rental agreement did not match the signature on the letters and the handwriting on the receipts was different than the handwriting on the documents signed by the landlord. Therefore, the Court upheld the Division's denial of

continued on page 16

in our courts - from page 15

Clayton's 2002 homestead rebate, finding that the Division reasonably concluded that Clayton did not establish her entitlement to the rebate.

Sales and Use Tax

Food For Consumption On The Premises Where Sold – *Campo Jersey, Inc. v. Director, Division of Taxation*, decided May 10, 2005; Tax Court No. 005483-2002.

Plaintiff (Campo), a franchisee of Mrs. Fields Cookies, sold cookies and brownies at Giants Stadium and the Brendan T. Byrne Arena pursuant to a license agreement with Harry M. Stevens Inc. of New Jersey, who held the sole concession rights to sell food and beverages at the Meadowlands Sports Complex from the New Jersey Sports and Exposition Authority (Authority). The subcontract between Campo and Stevens provided that Campo was a licensee, and not a lessee, and that no real or personal property was leased to Campo. Campo sold the brownies and cookies at all events, concerts, and games where admission fees were charged, unless otherwise provided by the subcontract, but otherwise did not have regular hours for conducting business.

During the years at issue and pursuant to the terms of the contract, Stevens trained, provided, and compensated the employees used in Campo's operations. Campo had a baking facility in one area containing equipment that was not permanently installed, but did not sell any products from that area. Mrs. Fields products were shipped to the Meadowlands Complex where they were stored in a freezer that is not owned by Campo. Stevens' em-

ployees removed the products from the freezer, baked the cookies and brownies, washed the baking sheets and utensils, cleaned the baking area, and transported the cookies and brownies to approximately 30 free-standing mobile carts owned by Campo. These carts were plugged into electrical outlets in order to maintain the cookies and brownies at the ambient temperature and illuminate the Mrs. Fields logo. The carts were not assigned to permanent locations and Campo was not permitted to maintain or repair the carts at the Meadowlands Complex.

Stevens' employees sold the cookies and brownies from the carts in unsealed wax bags. Customers purchased either two cookies or one brownie per bag with each bag selling for \$3.50. Sales tax was not charged on these sales. At the end of the event, a Campo employee collected the receipts from Stevens' employees.

The Division assessed sales tax on the sales of cookies and brownies pursuant to N.J.S.A. 54:32B-3(c)(1), which imposes sales tax on receipts of all food sales for consumption on the premises where sold. Campo claimed that all food was sold for consumption off the premises because Campo had no premises according to the license agreement. Furthermore, Campo claimed that its customers did not eat the food on the carts or even next to the carts but rather ate them at other areas.

In this case of first impression, the Court determined that the issue was whether the word "premises" should be defined broadly as the total space and facilities in or on which the vendor conducts his business

(See N.J.A.C. 18:24-12.2) or whether it should be construed narrowly to require the vendor control the premises where the vendor is located, as Campo contended it does not as a licensee. The Court commenced its analysis with the query of whether the food would be taxable if the Authority, as owner or operator, sold food to patrons at the Meadowlands Sports Complex. The Court found that the Authority would be obligated to collect sales tax because the food would be sold on the Authority's premises and no exemption applies to this transaction. The Court reasoned that if control of the premises was required for taxability that vendors could decide per agreement whether a sales transaction would be taxable and that subjectivity to taxability cannot be contracted away.

After determining that the plain meaning of the word "premises" is the total space in or on which a vendor conducts his business, the Court then undertook to determine whether the plain meaning of the word comported with the legislative intent. The Court noted that N.J.S.A. 54:32B-12(b) states that there is a presumption that all receipts for property or services of any type mentioned in N.J.S.A. 54:32B-3(c) are taxable. Therefore, the Court found that a reasonable interpretation of N.J.S.A. 54:32B-3(c) is that it was intended to subject to tax a sale of food enhanced with a service performed for the customer. This service may be the preparation of food or making the food available at a site where the customer wishes to consume it, or both. Consequently, the Court upheld the Division's assessment. □

In Our Legislature

Administration

Enhanced Debt Collection Procedures — P.L. 2005, c.124, enacted July 2, 2005, and effective immediately, provides enhanced procedures for the Department of Treasury in the collection of certain debts owed to a New Jersey State department or agency.

Cigarette Tax

Facilitating Tax Collection — P.L. 2005, c.85, enacted on May 4, 2005, and effective November 1, 2005, requires that retail sales of cigarettes may be made only when the purchaser is in the physical presence of the seller, unless the seller has fully complied with certain requirements, including collecting or verifying payment of applicable State cigarette and sales and use taxes and verifying certain information about the purchaser.

Corporation Business Tax

Uncoupling Certain Qualified Production Activities Income — P.L. 2005, c.127, enacted July 2, 2005, and effective immediately, applicable to privilege periods beginning after December 31, 2004, for corporation business tax purposes and to taxable years beginning after December 31, 2004, for gross income tax purposes, amends the Corporation Business Tax Act and the Gross Income Tax Act to disallow a deduction for certain qualified production activities income that was provided for Federal income tax purposes under the American Jobs Creation Act of 2004. The uncoupling does not apply to gross receipts from qualifying production property manufactured or produced by the taxpayer, but *will* apply to the activities that are described in Section 199 of the IRC, and *will* apply to

qualified production property grown or extracted by the taxpayer.

Environmental Taxes

Repeal of Air Toxics Surcharge — P.L. 2005, c.141, enacted July 7, 2005, and effective immediately, repeals the air toxics surcharge imposed under P.L. 2004, c.51 (N.J.S.A.13:1D-59 et seq.), and applies retroactively to calendar year 2004 and calendar years thereafter.

Gross Income Tax

Multistate Reciprocal Personal Income Tax Set-Off Program — P.L. 2005, c.125, enacted July 2, 2005, and effective immediately, authorizes the implementation of a multistate reciprocal personal income tax set-off program which allows the Director of the Division of Taxation to withhold another state's tax claims from New Jersey gross income tax refunds if the other state withholds New Jersey gross income tax claims from its personal income tax refunds.

Pension and Other Retirement Income Exclusions — P.L. 2005, c.130, enacted July 2, 2005, and effective immediately for taxable years beginning on or after January 1, 2005, eliminates the New Jersey gross income tax pension exclusion and other retirement income exclusion for certain taxpayers. The exclusions remain available for taxpayers that have gross income of not more than \$100,000.

Insurance Premiums Tax

Taxable Premiums Cap — P.L. 2005, c.128, enacted July 2, 2005, and effective immediately for periods beginning January 1, 2005, amends the maximum tax rule capping taxable premiums at 12.5% of total premiums for any company whose taxable premiums in New

Jersey exceed 12.5% of its total taxable premiums by excluding all health service corporations established pursuant to the provisions of P.L. 1985, c.236 (N.J.S.A.17:48A-1 et seq.) from the coverage of the cap. The law also imposes the insurance premiums tax on all premiums of health services corporations and on any life, accident, or health insurance corporation which a health services corporation owns stock in, controls, or otherwise becomes affiliated with.

Property Tax Relief Programs

Increase in Homestead Rebate Appropriations — P.L. 2005, c.121, enacted July 2, 2005, and effective immediately, makes a supplemental appropriation of \$400,000,000 to pay homestead rebate claims beginning July 1, 2005. See [Budget Funds 2004 FAIR Rebates](#), page 2.

Sales and Use Tax

Major Changes to Sales and Use Tax Act — P.L. 2005, c.126, enacted July 2, 2005, and effective October 1, 2005, conforms the State's Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The law allows New Jersey to join with 42 other states and the District of Columbia to continue the task of modernizing the administration of sales and use tax by adopting common definitions and uniformly understood tax principles.

The law makes amendments and supplements to the New Jersey Sales and Use Tax Act that are necessary to make the laws conform to the terms of the Streamlined Sales and Use Tax Agreement. Significant areas of the Act that were changed include sections on leasing, direct mail operations, sales of food and clothing, and deductions for bad debts.

□

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2004 (January 1, 2004 – December 31, 2004) and tax year 2005 (January 1, 2005 – December 31, 2005) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2004](#) [2005](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2004](#) [2005](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2004](#) [2005](#) ☐



important phone numbers

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.....	609-826-4400
FAIR Rebate Hotline	1-888-238-1233
Property Tax Reimbursement Hotline	1-800-882-6597
Earned Income Tax Credit Hotline	609-292-6400
NJ TaxFax	609-826-4500
Business Paperless Telefiling System	1-877-829-2866
Speaker Programs	609-984-4101
Alcoholic Beverage Tax	609-984-4123
Corporation Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance and Estate Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds	609-292-7018
Public Utility Tax	609-633-2576